

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 25, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP23
STATE OF WISCONSIN**

Cir. Ct. No. 2015TP2

**IN COURT OF APPEALS
DISTRICT IV**

**IN RE THE TERMINATION OF PARENTAL RIGHTS TO R. E. L.,
A PERSON UNDER THE AGE OF 18:**

WAUSHARA COUNTY DEPARTMENT OF HUMAN SERVICES,

PETITIONER-RESPONDENT,

V.

V. L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Waushara County:
GUY D. DUTCHER, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ V.L. appeals an order of the circuit court terminating her parental rights to R.E.L. V.L. contends that the circuit court improperly exercised its discretion in deciding that termination of her parental rights is in the best interests of R.E.L. because the court failed to give proper consideration to certain of the statutory factors that a court is required to consider in making this decision. For the reasons discussed below, I conclude that the circuit court properly exercised its discretion and accordingly affirm.

BACKGROUND

¶2 V.L. is the biological mother of R.E.L., who was born in January 2011. In January 2014, the circuit court entered a dispositional order determining R.E.L. to be a child in need of protection or services, *see* WIS. STAT. § 48.415(2), and placing him outside his home. In March 2015, the Waushara County Department of Human Services petitioned the court for the termination of V.L.'s parental rights to R.E.L. on the ground that R.E.L. is in continuing need of protection or services. *See* § 48.415(2).

¶3 Following a trial, a jury determined that grounds existed for the termination of V.L.'s parental rights. The circuit court then held a dispositional hearing. Relying on testimony at the trial and hearing, as well as the county social worker's dispositional report and a separate report from Lutheran Social Services regarding the feasibility of adoption, the court found that termination of V.L.'s parental rights to R.E.L. was in R.E.L.'s best interests. The court entered an order terminating V.L.'s parental rights to R.E.L. V.L. appeals.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

DISCUSSION

¶4 V.L. contends that the circuit court improperly exercised its discretion in determining that termination of her parental rights was in R.E.L.’s best interests because the court did not take into proper consideration certain factors that must be considered under the statutes. I disagree.

¶5 Once the grounds for termination have been established, a circuit court’s decision to terminate an individual’s parental rights turns on the child’s best interests. *See* WIS. STAT. § 48.01(1) (“[T]he best interests of the child ... shall always be of paramount consideration.”); WIS. STAT. § 48.426(2) (“The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.”). Accordingly, the focus at the disposition phase is on the child, and not the parent. *See Richard D. v. Rebecca G.*, 228 Wis. 2d 658, 672-73, 599 N.W.2d 90 (Ct. App. 1999).

¶6 Whether termination of parental rights is in the child’s best interests is a discretionary decision of the circuit court. *Darryl T.-H. v. Margaret H.*, 2000 WI 42, ¶27, 234 Wis. 2d 606, 610 N.W.2d 475. We will not overturn a circuit court’s discretionary decision unless the court improperly exercised its discretion. *Jerry M. v. Dennis L.M.*, 198 Wis. 2d 10, 21, 542 N.W.2d 162 (Ct. App. 1995). A circuit court properly exercises its discretion “when it examines the relevant facts, applies a proper standard of law, and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach.” *Bank Mut. v. S.J. Boyer Constr., Inc.*, 2010 WI 74, ¶20, 326 Wis. 2d 521, 785 N.W.2d 462.

¶7 When assessing whether termination is in the child’s best interests, the court should consider any relevant evidence, but must consider the following six statutory factors:

(a) The likelihood of the child’s adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child’s current placement, the likelihood of future placements and the results of prior placements.

WIS. STAT. § 48.426(3); *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶¶28-29, 255 Wis. 2d 170, 648 N.W.2d 402.

¶8 V.L.’s arguments on appeal amount to a complaint that the circuit court failed to properly exercise its discretion by failing to explicitly recite each of the WIS. STAT. § 48.426(3) factors by name or number. However, the circuit court was not required to use any “magic words” in rendering its decision, *see Michael A.P. v. Solsrud*, 178 Wis. 2d 137, 151, 502 N.W.2d 918 (Ct. App. 1993), and this court will defer to the circuit court and affirm so long as the record reflects that the court properly considered each factor. *See Darryl T.-H.*, 234 Wis. 2d 606, ¶¶29, 35. Thus, for example, because the circuit court stated that it had reviewed the county social worker’s dispositional report and the report regarding the feasibility

of adoption, this court will “independently review” these documents to determine whether they provide “a basis for the court’s exercise of discretion.” *See State v. Mainiero*, 189 Wis. 2d 80, 95, 525 N.W.2d 304 (Ct. App.1994). Here, the evidence in the record either reflects that the court properly took into consideration the § 48.426(3) factor at issue, or reflects evidence supporting the court’s decision relative to the factor.

¶9 In particular, V.L. takes issue with the circuit court’s consideration of four of the factors. I address each factor in turn.

¶10 I conclude that the circuit court’s decision under the first WIS. STAT. § 48.426(3) factor that V.L. argues was not adequately considered by the court—R.E.L.’s health at the time of disposition and at the time when R.E.L. was removed from V.L.’s home—is supported by the record. *See* § 48.426(3)(b).² The county social worker testified that there were no concerns about R.E.L.’s physical health, and that while R.E.L. had recently been diagnosed with reactive attachment disorder, he was being assisted by a therapist. Based on this testimony, the circuit court could reasonably find that R.E.L. was generally healthy at pertinent times and had been receiving appropriate mental health treatment since being removed from V.L.’s home, facts supporting the court’s decision.

¶11 Regarding the third WIS. STAT. § 48.426(3) factor, I conclude that the record contains evidence that would support findings that R.E.L. lacked substantial relationships with his family members and that it would not harm

² V.L. concedes that the circuit court properly considered R.E.L.’s age at the time of the disposition and at the time of removal, but argues that the court “wholly failed to consider R.E.L.’s health.”

R.E.L. to sever family relationships. *See* § 48.426(3)(c). Not only did the court allude to this factor, indicating the court’s actual consideration of it, there was extensive testimony supporting the court’s decision. The social worker testified at the dispositional hearing and observed in her report that R.E.L. has no substantial relationships with any family member, that R.E.L. did not ask for V.L. or V.L.’s significant other unless he saw them, and that in the social worker’s opinion severing the relationship would not result in harm to R.E.L. Moreover, R.E.L.’s foster mother testified that R.E.L. does not ask to speak to any family members and that the foster mother could recall R.E.L. asking to call V.L. only one time.

¶12 I conclude that the record reflects that the circuit court appropriately considered the possible relevance of the “wishes of the child,” WIS. STAT. § 48.426(2)(d). The court expressly opted against placing weight on this factor, given R.E.L.’s age. The court found that R.E.L., who was only four at the time of the termination proceeding, “is a little boy who doesn’t understand what’s taking place here.” This was a proper basis for the court to decline to ask R.E.L. about his wishes. *See Darryl T.-H.*, 234 Wis. 2d 606, ¶¶29, 35; *Bank Mut.*, 326 Wis. 2d 521, ¶20 (this court will defer to the circuit court as to the weight it gives various factors).

¶13 Finally, I reject V.L.’s argument that the circuit court failed to consider the fourth factor at issue, whether R.E.L. will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of R.E.L.’s current placement, the likelihood of future placements, and the results of prior placements. *See* WIS. STAT. § 48.426(3)(f). Although this factor was not given prominence in the trial court’s decision, testimony from the social worker and the foster mother, as well as in the social worker’s report, support the court’s decision. Moreover, the court made an

observation directly on point, stating that R.E.L. “has a right to have stability in his life, to know who he looks to as his parents.”

¶14 In sum, I conclude that the circuit court “examine[d] the relevant facts, applie[d] a proper standard of law, and, using a demonstrated rational process, reache[d] a conclusion that a reasonable judge could reach.” *See Bank Mut.*, 326 Wis. 2d 521, ¶20. Accordingly, I see no reason to conclude that the circuit court improperly exercised its discretion in finding that termination of V.L.’s parental rights was in R.E.L.’s best interests.

CONCLUSION

¶15 For the reasons discussed above, I affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

